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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 CURTIS J. WALKER,

9 Petitioner,

Case No. C17-1540-RSM

10 v.

11 JERI BOE,

ORDER DISMISSING FEDERAL
HABEAS ACTION

12 Respondent.

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14 The Court, having reviewed Petitioner's amended petition for writ of habeas corpus,
15 Respondent's answer to the petition, the Report and Recommendation of Mary Alice Theiler,
16 United States Magistrate Judge, Petitioner's objections thereto, Respondent's reply to the
17 objections, and the remaining record, hereby finds and ORDERS:

18 (1) The Court ADOPTS the Report and Recommendation. Judge Theiler determined
19 that Petitioner had failed to file his habeas petition within the applicable statute of limitations, and
20 recommends its dismissal. Dkt. #18 at 6. Petitioner objects to that determination, arguing that his
21 state court action was "pending" until September 29, 2017, when the court of appeals issued a
22 certificate of finality. Dkt. #21. Thus, he asserts, his habeas petition was timely filed on October
23 16, 2017. *Id.* at 2-4. In the alternative, Petitioner argues that, even if Judge Theiler was correct in

1 calculating the statute of limitations, because he is proceeding *pro se* and his calculation of the
2 limitations period was reasonable, the Court should accept his Petition and allow it to proceed to
3 a determination on the merits. Dkt. #21 at 4-5. Respondent urges the Court to adopt the Report
4 and Recommendation for the reasons discussed by Judge Theiler. Dkt. #22.

5 As Judge Theiler explained, it is the appellate court's denial of review and not the
6 ministerial issuance of a certificate of finality that signals the end of collateral review. Dkt. #18
7 at 4 (citing *Hemmerle v. Schriro*, 495 F.3d 1069, 1077 (9th Cir. 2007) and *White v. Klitzkie*, 281
8 F.3d 920, 923 n.4 (9th Cir. 2002)). Likewise, Judge Theiler correctly noted that nothing further
9 was pending in Petitioner's case after April 24, 2017, when the Washington Supreme Court
10 Commissioner denied discretionary review. Dkt. #18 at 5. Although the certificate of finality on
11 Petitioner's personal restraint proceeding was not issued until September 29, 2017, that does not
12 change the fact that April 24, 2017, was the date after which nothing further was "pending" for
13 tolling purposes. The certificate of finality was merely a ministerial notification to the parties
14 issued by the clerk of the Court of Appeals. Accordingly, Petitioner had until July 10, 2017 to file
15 his habeas petition. He did not do so until October 16, 2017. Therefore, his petition was untimely.

16 Petitioner appears to suggest that he is entitled to equitable tolling, which he characterizes
17 as leniency, due to his *pro se* status. Dkt. #21 at 4-5. However, in order to receive equitable tolling,
18 a petitioner must show "(1) that he has been pursuing his rights diligently, and (2) that some
19 extraordinary circumstance stood in his way." *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005).
20 "[T]he requirement that extraordinary circumstances 'stood in his way' suggests that an external
21 force must cause the untimeliness, rather than, as we have said, merely 'oversight, miscalculation
22 or negligence on [the petitioner's] part, all of which would preclude application of equitable
23 tolling.'" *Waldron-Ramsey v. Pacholke*, 556 F.3d 1008, 1011 (9th Cir. 2009) (quoting *Harris v.*

1 *Carter*, 515 F.3d 1051, 1055 (9th Cir. 2008). Petitioner provides no legal authority that suggests
2 *pro se* status alone constitutes an extraordinary circumstance such that equitable tolling would
3 apply. *See* Dkt. #21 at 4-5. Therefore, this Court finds that Petitioner's habeas petition is time-
4 barred and must be dismissed.

5 (2) Petitioner's amended petition for writ of habeas corpus (Dkt. #6) and this action are
6 DISMISSED, with prejudice, as untimely.

7 (3) In accordance with Rule 11 of the Rules Governing Section 2254 Cases in the
8 United States District Courts, a certificate of appealability is DENIED.

9 (4) The Clerk is directed to send copies of this Order to Petitioner, to counsel for
10 Respondent, and to the Honorable Mary Alice Theiler.

11 DATED this 30 day of May, 2018.

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14 RICARDO S. MARTINEZ
15 CHIEF UNITED STATES DISTRICT JUDGE
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